REMARKS

Applicants respectfully request consideration of the subject application. This Response is submitted in response to the Office Action mailed March 20, 2008. Claims 1-31 are pending. In this Amendment, claims 1-31 have been amended. No new matter has been added.

35 U.S.C. § 112 Rejections

The Examiner has rejected claims 1-31 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention as set forth in the paragraphs below.

The Examiner asserts that in claims 1, 26, 28 and 30, "it is not clear as to what applicant is claiming as far as a system goes . . . it is not clear as to what statutory class of invention the claims fall into due to the fact that there is no structure recited, and due to the fact that some of the claims are seen as reciting more of what would be considered the intended use of the system."

Although claims are often directed to a single statutory class, this is not required under Section 112 and the claims may contain multiple statutory classes. However, Applicant wishes to expedite allowance of the case.

Accordingly, claims 1, 26, 28 and 30 have been amended to recite "In a consignment inventory management and reconciliation system, a method for consignment inventory management, comprising." Thus, claims 1, 26, 28 and 30 are directed to a method.

The Examiner asserts that in claims 1, 26, 28 and 30, "these independent claims do not contain any kind of transitionary phrase that identifies where the preamble ends and where the body of the claim begins (i.e. comprising, consisting, or consisting essentially of)."

Although claims are often divided into a preamble, a transitionary phrase and a body, this is not required under Section 112 and the claims may employ other lexicography. However, Applicant wishes to expedite allowance of the case.

Accordingly, claims 1, 26, 28 and 30 have been amended to recite "In a consignment inventory management and reconciliation system, a method for consignment inventory management, comprising." Thus, claims 1, 26, 28 and 30 clearly contain a preamble (before "comprising"), a transitionary phrase ("comprising") and a body (after "comprising").

The Examiner asserts that in claim 2, the term "ages" is unclear.

Although the term "ages" may be unclear to the Examiner, the term "ages" is clear to those skilled in the art of consignment inventory management. However, Applicant wishes to expedite allowance of the case.

Accordingly, claim 2 has been amended to recite "aging the first items, the second items and the third items, thereby tracking the amounts of the first items, the second items and the third items over time." The specification supports this limitation at page 13, line 25 ("This allows the seller to age (track the amounts over time)").

The Examiner asserts that in claim 6, the phrases "one: zero" and "a positive number, and a negative number" and "with a number of decimal places" are unclear. Accordingly, claim 6 has been amended to recite "the transaction amount is zero, a positive number, or a negative number."

The Examiner asserts that in claims 8-17, "This seems to be just descriptive language directed to the intended use of the unknown structure." Accordingly, claims 8-17 have been amended to recite "identifying the transaction as" the corresponding term in claim 7 and the conditions under which this occurs.

The Examiner asserts that in claim 17, the term "count" lacks antecedent basis in claim 7. Accordingly, claim 7 has been amended to recite "count."

The Examiner asserts that in claim 29, the phrase "[the second items] cannot be found at the buyer's consignment location" contradicts the phrase

"second items can also be found at the buyer's consignment location" in claim 28.

Accordingly, claim 29 has been amended to delete this phrase.

The Examiner asserts that in claim 31, the phrase "process steps" is unclear since claim 1 appears to be a system. Accordingly, claim 31 has been amended to delete this phrase.

Applicants, accordingly, respectfully request withdrawal of the rejections under 35 U.S.C. § 112, second paragraph.

35 U.S.C. § 102 Rejections

The Examiner has rejected claims 1-31 under 35 U.S.C. § 102(e) as being anticipated by Guidice et al. (U.S. Patent No. 6,463,420, hereinafter "Guidice").

Guidice discloses an online tracking technique that enables a customer to track multiple orders from multiple carriers through a supplier web site.

The customer accesses the supplier web site and enters order information through a server interface. The server determines if all the required fields have been entered, examines an inventory database to determine whether the ordered items are presently in inventory, determines an estimated delivery date for the ordered items, asks the customer to identify the end user for which the item is intended, and determines a price for the items. The server calculates the price based on a customer price list, a list price, or a default value.

The server presents the customer with a shopping cart that displays an order summary with pricing, inventory availability and delivery date for the ordered items. If, however, the server does not find the list price or finds the list price is the default value then the server informs the customer there is no price for the ordered item and the process ends.

The supplier tracks orders from multiple carriers by obtaining shipment information from supplier sources such as warehouses, outside vendors and manufacturing facilities, periodically and automatically communicating with the carriers about the delivery information, and storing the carrier tracking information in a database. In this manner, the supplier maintains a complete database of carrier tracking information that is separate from the carrier systems.

The customer accesses the supplier web site to obtain the carrier tracking information in the supplier database for the ordered items. In this manner, by integrating the carrier tracking information into the supplier web site, the customer can track orders from multiple carriers and continue to do business with the supplier without navigating off the supplier web site.

Claims 1, 26 and 30 recite "In a consignment inventory management and reconciliation system, a method for consignment inventory management, comprising . . . tracking and reconciliation of second items shipped to the buyer by the seller that have not been billed by the seller and are not located at the

buyer's consignment inventory location."

Claims 1, 28 and 30 recite "In a consignment inventory management and reconciliation system, a method for consignment inventory management, comprising . . . tracking and reconciliation of third items shipped to the buyer by a third party other than the seller, wherein the third items are located at the buyer's consignment inventory location and are of the same identity as items provided on consignment by the seller to the buyer."

Guidice fails to teach or suggest a consignment inventory system or method. In fact, Guidice does not even mention the term "consignment." Furthermore, neither the supplier, the carrier, the customer nor the end user manages a consignment inventory.

Guidice discusses inventory as follows:

> If there is no required information missing, the process continues to step 214, where the server examines an inventory database to determine whether the ordered item(s) are presently in inventory, and determines an estimated delivery date for the ordered item(s). (Col. 4, lines 20-24).

> In response to this submission, in step 234, the pricing, inventory availability, and delivery date are be calculated, and in step 236, the customer is presented with an order summary. (Col. 4, lines 62-65).

Guidice merely describes the supplier responding to the customer order by searching an inventory database for availability of the ordered items. This has nothing do to with consignment inventory management. For this reason alone, claims 1, 26, 28 and 30 distinguish over Guidice.

Guidice also fails to teach or suggest tracking ordered items shipped to the customer (buyer) by the supplier (seller) that have not been billed by the supplier (seller) and are not found at the customer's (buyer's) location. Instead, Guidice discloses tracking ordered items that are shipped to the customer (buyer) by the supplier (seller) after the customer (buyer) has received the order summary with pricing details. Furthermore, the ordered items are not shipped unless the order summary with pricing details is furnished to the customer (buyer). For this reason alone, claims 1, 26 and 30 distinguish over Guidice.

Guidice also fails to teach or suggest tracking ordered items shipped to the customer (buyer) by a third party other than the supplier (seller) wherein the ordered items are found at the customer's (buyers) location and are of the same identity as items provided by the supplier (seller) to the customer (buyer). Instead, Guidice discloses tracking ordered items that are shipped to the customer (buyer) by the supplier (seller). Furthermore, there are no alternate suppliers. For this reason alone, claims 1, 26 and 30 distinguish over Guidice.

The Examiner asserts that "Guidice discloses a system for managing and tracking items shipped from a seller to buyers." However, Guidice says nothing about consignment inventory management, much less the specific consignment inventory management steps for the second and third items mentioned above.

The Examiner also asserts that "Most of the claims are reciting limitations that have nothing to do with the structure of the system and are directed to non-functional descriptive material . . . Due to the indefiniteness of the claims and the fact that most of the claims are reciting non-functional descriptive material not related to the system itself, the claims as they are best understood by the examiner are anticipated by Guidice."

Applicants fail to understand the justification for ignoring the claim limitations. However, since the claims have been amended to resolve the statutory class and indefiniteness issues, each and every claim limitation must now be considered.

Applicants, accordingly, respectfully request withdrawal of the rejections under 35 U.S.C. § 102.

35 U.S.C. § 101 Rejections

The Examiner has rejected claims 1-27 and 31 under 35 U.S.C. § 101 as

claiming the same invention as copending U.S. Application Serial No. 10/394,837

filed on March 21, 2003.

The '837 application has been amended such that claims 1, 26, 28 and 30

recite "In a consignment inventory management and reconciliation system that

includes a processor and a computer useable medium having computer program

code, a method for consignment inventory management performed by the

processor executing the computer program code, the method comprising."

Claims 1-31 in the present application do not recite a processor, a

computer useable medium or computer program code. Therefore, the present

application claims a different invention than the '837 application.

Applicants, accordingly, respectfully request withdrawal of the rejections

under 35 U.S.C. § 101.

Terminal Disclaimer

A Terminal Disclaimer based on the '837 application is filed herewith.

The Terminal Disclaimer obviates any obviousness-type double patenting

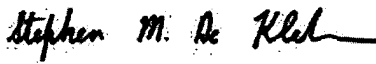rejection based on the '837 application.

Conclusion

Applicants respectfully submit that the present application is in condition

for allowance. If the Examiner believes a telephone conference would expedite

or assist in the allowance of the present application, the Examiner is invited to

call Stephen M. De Klerk at (408) 720-8300.

If any additional fee is required, please charge Deposit Account No.

02-2666. Any necessary extension of time for response not already requested is

hereby requested. Please charge any corresponding fee to Deposit Account No.

02-2666.

Respectfully submitted,

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James Barwick, et al.
Application No.: 10/549,990   - 24 -

Examiner: Dennis W. Ruhl
Art Unit: 3689